

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NEW ENGLAND CENTRAL
RAILROAD, INC.,

Plaintiff/Counterdefendant,

-v.-

Civil Action No. 04-30235-MAP

SPRINGFIELD TERMINAL
RAILWAY COMPANY, et al.,

Defendants/Counterclaimants.

**DECLARATION OF ROGER D. BERGERON IN OPPOSITION TO PLAINTIFF'S
MOTION TO STRIKE**

Roger D. Bergeron declares as follows:

1. I am employed by the defendants/counterclaimants in this action, Springfield Terminal Railway Company and Boston and Maine Corporation (collectively, "ST/BM"), as Vice-President of Special Projects. I make this declaration in opposition to the motion to strike filed by Plaintiff New England Central Railroad, Inc. ("NECR"). This declaration supplements my deposition testimony and the declarations I have made in respect of the parties' motions for summary judgment.

2. On July 6, 2004, I conducted an on-site investigation of the July 3, 2004 derailment (the "Derailment") site. Although I did not retain the very rough initial notes that I made at that time, I created a neater version, directly from those rough notes, within two hours after making them. The neater version was produced to NECR and I was questioned about it when my deposition was taken in this action. There is no material or substantive difference

DM: WINSTON & STRAWN LLP

between the information on the original rough notes and the version that was created contemporaneously and has been produced to NECR.

3. The proper *long term* remedy of a crosslevel defect of the sort found on the segment in the vicinity of MP 10.18 and MP 10.16 is tamping up the ballast under the low (inside) end of the ties. The FRA track safety regulations do permit, however, the *temporary* use of a proper slow order for up to thirty days while the long term correction is being made. See 49 C.F.R. § 213.9 (2005).

4. A *temporary* slow order is not proper unless it is consistent with the class of the track. Because the track in question did not meet all the requirements for Class 2, see 49 C.F.R. § 213.63 n. 2 (2005), only a slow order to Class 1 speed—ten miles per hour for freight trains—would have been proper.

5. The reverse of my two-sided page of notes regarding the Derailment was located by ST/BM on May 9, 2007. Although the front side was copied, produced to NECR, and used in my deposition, the reverse inadvertently was copied. I have reviewed the reverse page and it is consistent with, and does not alter, my prior testimony. I understand that ST/BM's counsel promptly will produce the reverse page to counsel for NECR.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed May __, 2007.


Roger D. Bergeron